

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
GCI Communication Corp.)	File No.: EB-FIELDWR-12-00004576
)	NAL/Acct. No.: 201332780001
Former Registrant of)	FRN: 0001568880
Antenna Structure No. 1265246)	
Fairbanks, Alaska)	

FORFEITURE ORDER

Adopted: February 3, 2015

Released: February 4, 2015

By the Regional Director, Western Region, Enforcement Bureau:

I. INTRODUCTION

1. We impose a penalty of \$20,000 against General Communication, Inc., d/b/a GCI Communication Corp. (GCI), former owner of an antenna structure located near Fairbanks, Alaska, for failing to monitor and exhibit the required lighting on the structure and for failing to notify the Federal Aviation Administration (FAA) of the light outage. GCI does not deny the violations, but requests that we reduce the proposed forfeiture because of its good faith efforts to correct the lighting issues, which we deny given that GCI's corrective actions were taken after being notified of the light outage by FCC agents. After reviewing GCI's response to the *NAL*, we find no reason to cancel, withdraw, or reduce the proposed penalty, and therefore we assess the \$20,000 forfeiture the Bureau previously proposed.

II. BACKGROUND

2. During inspections on September 12 and September 13, 2012, an agent from the Enforcement Bureau's Anchorage Office (Anchorage Office) observed that antenna structure number 1265246 (the Antenna Structure),¹ located near Fairbanks, Alaska, which is required for aircraft safety purposes to display medium intensity flashing white lights during the daytime and at twilight and red lights at nighttime, was unlit during daytime hours.² The agent contacted the FAA and, after learning that a Notice to Airmen (NOTAM) had not been issued by GCI for the unlit Antenna Structure, asked the

¹ On February 4, 2014, GCI filed an application to update the name of the registrant of the Antenna Structure to The Alaska Wireless Network. See Application No. A0891823, granted Feb. 5, 2014. The Alaska Wireless Network is partially owned by GCI. See *Applications of GCI Communication Corp., ACS Wireless License Sub, Inc., ACS Of Anchorage License Sub, Inc., and Unicom, Inc. For Consent To Assign Licenses To The Alaska Wireless Network, LLC*, Memorandum Opinion and Order and Declaratory Ruling, 28 FCC Rcd 10433 (2013) (granting multiple applications for the assignment of licenses from ACS of Anchorage License Sub, Inc., ACS Wireless License Sub, Inc., GCI Communication Corp., and Unicom, Inc. to The Alaska Wireless Network, LLC).

² The *NAL* includes a more complete discussion of the facts and history of this case and is incorporated herein by reference. See *GCI Communications Corp., Notice of Apparent Liability for Forfeiture*, 28 FCC Rcd 12991, 12991-92, paras. 2-4 (Enf. Bur. 2013) (*NAL*).

FAA to issue one.³ The agent then contacted GCI personnel and advised them of the light outage and the issuance of the NOTAM.⁴

3. On July 10, 2013, the Bureau issued the *NAL* proposing a \$20,000 forfeiture against GCI for its apparent willful and repeated violation of Section 303(q) of the Communications Act of 1934, as amended (Act),⁵ and Sections 17.47, 17.48, and 17.51(b) of the Commission's rules (Rules),⁶ by failing to monitor the Antenna Structure's obstruction lighting on a daily basis or maintain a functioning alarm system; exhibit the Antenna Structure's required daytime medium intensity obstruction lighting; and notify the FAA of a known lighting outage on the Antenna Structure.

4. On October 28, 2013, GCI filed a response to the *NAL*.⁷ GCI makes a number of arguments as to why the *NAL* should be reduced, specifically stating that it had made efforts to resolve the light outage after notification by the Anchorage Office of the violations as well as its subsequent installation of a monitoring system prior to the issuance of the *NAL*.⁸ GCI states that after replacing the light, it later determined further problems with its lighting system existed and replaced other equipment and then installed a remote monitoring system to "more efficiently correct any future tower light outages."⁹ GCI also argues that the upward adjustment of \$10,000 that was made to the proposed forfeiture because of the size of GCI was unnecessary as GCI "takes its obligations seriously and clearly considers a \$10,000 forfeiture to be a deterrent and not merely 'a cost of doing business.'"¹⁰

III. DISCUSSION

5. The Bureau proposed a forfeiture in this case in accordance with Section 503(b) of the Act,¹¹ Section 1.80 of the Rules,¹² and the Commission's *Forfeiture Policy Statement*.¹³ When we assess forfeitures, Section 503(b)(2)(E) requires that we take into account the "nature, circumstances, extent, and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."¹⁴ As discussed below, we have

³ See 47 C.F.R. § 17.48 (requiring antenna structure owners to notify the FAA immediately of any known outages of tower lighting lasting more than 30 minutes).

⁴ The agent also monitored the structure at nighttime and observed that the red obstruction lighting was functioning properly.

⁵ 47 U.S.C. § 303(q).

⁶ 47 C.F.R. §§ 17.47, 17.48, 17.51(b). The Commission recently amended Sections 17.47, 17.48 and 17.51 of the Rules. See *In the Matter of 2004 and 2006 Biennial Regulatory Review – Streamlining and Other Revisions of Parts 1 and 17 of the Commission's Rules Governing Construction, Marking and Lighting of Antenna Structures*, Report and Order, 29 FCC Rcd 9787 (2014). The Rules cited to in this Forfeiture Order, however, were the Rules in effect at the time of the violations.

⁷ See GCI Response to Notice of Apparent Liability (October 28, 2013) (on file in EB-FIELDWR-00004576) (*NAL* Response).

⁸ See *NAL* Response at 1.

⁹ *Id.* at 1–2. GCI also states that it has undertaken a "voluntary, internal comprehensive audit of tower licensing and construction procedures to ensure compliance and future safety." *Id.* at 2.

¹⁰ *Id.* at 2.

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. § 1.80.

¹³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) (*Forfeiture Policy Statement*), *recons. denied*, Memorandum Opinion and Order, 15 FCC Rcd 303 (1999).

¹⁴ 47 U.S.C. § 503(b)(2)(E).

fully considered GCI's response to the *NAL*, but we find none of the arguments persuasive. We therefore affirm the \$20,000 forfeiture proposed in the *NAL*.

A. Good Faith Penalty Reductions Apply to Corrective Actions Begun Prior to Notification of a Violation.

6. GCI requests reduction of the proposed forfeiture, arguing that it made good faith efforts to repair the lights on the Antenna Structure after being notified of the outage by the Anchorage Office.¹⁵ While the Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator, those corrective efforts must be taken *prior* to notification of the violation.¹⁶ As the Commission has repeatedly stated, "corrective action taken to come into compliance with Commission rules or policy is expected, and does not nullify or mitigate any prior forfeitures or violations."¹⁷ Consequently, we have reduced proposed forfeitures when a licensee demonstrates that it contracted to resolve a violation prior to inspection.¹⁸ GCI has presented no evidence that it undertook efforts to repair the lighting outage or upgraded its monitoring system prior to being contacted by the Anchorage Office during the inspection. We therefore decline to reduce the proposed forfeiture.

B. Upward Adjustments to Penalty Assessments are Appropriate for Large and Highly Profitable Entities.

7. GCI also argues that the upward adjustment of \$10,000, to the base forfeiture of \$10,000, was unnecessary.¹⁹ We disagree. As explained in the *NAL*, GCI, a Tier III carrier, is a publicly-held corporation serving most of Alaska, with annual revenues in the hundreds of millions of dollars.²⁰ To ensure that forfeiture liability is a deterrent and not simply a cost of doing business, the Commission has determined that large companies such as GCI should expect the assessment of higher forfeitures for violations.²¹

¹⁵ *NAL* Response at 1–2.

¹⁶ See, e.g., *Sutro Corp.*, Memorandum Opinion and Order, 19 FCC Rcd 15274, 15277, para. 10 (2004) (stating that the Commission will generally reduce a forfeiture "based on the good faith corrective efforts of a violator when those corrective efforts were taken prior to Commission notification of the violation"); *Catholic Radio Network of Loveland, Inc.*, Forfeiture Order, 29 FCC Rcd 121, 122–23, para. 5 (Enf. Bur. 2014) ("The Commission will generally reduce an assessed forfeiture based on the good faith corrective efforts of a violator when those corrective efforts were taken *prior* to Commission notification of the violation.") (emphasis in original); *Argos Net, Inc.*, Forfeiture Order, 28 FCC Rcd 1126, 1127, para. 4 (Enf. Bur. 2013) ("[C]orrective action taken after notification or inspection by the Commission does not mitigate the violation . . .").

¹⁷ See, e.g., *Seawest Yacht Brokers*, Notice of Forfeiture, 9 FCC Rcd 6099, 6099, para. 7 (1994) (citations omitted); *Exec. Broad. Corp.*, 3 FCC 2d 699, 700, para. 6 (1966) ("The fact that prompt corrective action was taken . . . does not excuse the prior violations.").

¹⁸ See, e.g., *Bold Gold Media WBS, L.P.*, Forfeiture Order, 29 FCC Rcd 6016 (Enf. Bur. 2014) (reducing proposed forfeiture where licensee contracted to acquire required Emergency Alert System equipment prior to inspection).

¹⁹ *NAL* Response at 2.

²⁰ See *NAL*, 28 FCC Rcd 12994, para. 9. Based on its 10-K SEC filing (Mar. 27, 2014), GCI had annual revenues of \$811,628,000 in 2013. Based on the most recent 10-Q quarterly report filing (Aug. 7, 2014), GCI's total revenues for the six months ending July 30, 2013, were \$440,682,000. See *NAL*, 28 FCC Rcd at 12994, para. 9.

²¹ See, e.g., *Forfeiture Policy Statement*, 12 FCC Rcd at 17099–100, paras. 23–24 (cautioning all entities and individuals that, independent from the uniform base forfeiture amounts, the Commission will take into account the subject violator's ability to pay in determining the amount of a forfeiture to guarantee that forfeitures issued against large or highly profitable entities are not considered merely an affordable cost of doing business, and noting that such large or highly profitable entities should expect that the forfeiture amount set out in a Notice of Apparent Liability against them may in many cases be above, or even well above, the relevant base amount); *Google Inc.*, Notice of Apparent Liability for Forfeiture, 27 FCC Rcd 4012 (Enf. Bur. 2012) (upwardly adjusting the base

(continued....)

8. Weighing the relevant statutory factors and our own forfeiture guidelines, we conclude, based upon the evidence before us, that the proposed forfeiture of \$20,000 properly reflects the seriousness, duration, and scope of GCI's violations.

IV. CONCLUSION

9. Based on the record before us and in light of the applicable statutory factors, we conclude that GCI willfully and repeatedly violated Section 303(q) of the Act,²² and Sections 17.47, 17.48, and 17.51(b) of the Rules,²³ by failing to monitor the Antenna Structure's obstruction lighting on a daily basis or maintain a functioning alarm system; exhibit the Antenna Structure's required daytime medium intensity obstruction lighting; and notify the FAA of a known lighting outage on the Antenna Structure. We decline to cancel or reduce the \$20,000 forfeiture proposed in the *NAL*.

V. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,²⁴ and Section 1.80 of the Rules,²⁵ General Communication, Inc., d/b/a GCI Communication Corp., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of twenty thousand dollars (\$20,000) for violations of Section 303(q) of the Act and Sections 17.47, 17.48, and 17.51(b) of the Rules.

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release of this Forfeiture Order.²⁶ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.²⁷

12. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. General Communication, Inc., d/b/a GCI Communication Corp., shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁸ When completing the Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with completed Form 159) must be mailed to the Federal Communications Commission, P.O. Box 979088, St. Louis, MO

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forfeiture due to the deliberate nature of the violation and the company's gross revenues); *America Movil, S.A.B. de C.V., Parent of Puerto Rico Telephone Company, Inc.*, Notice of Apparent Liability for Forfeiture, 26 FCC Rcd 8672 (Enf. Bur. 2011) (doubling the base forfeiture due to the company's size and gross revenues); *Fox Television Stations Inc.*, Notice of Apparent Liability for Forfeiture, 25 FCC Rcd 7074 (Enf. Bur. 2010) (upwardly adjusting the base forfeiture based on the egregiousness of the violation and the company's substantial revenues). See *NAL*, 28 FCC Rcd at 12994, para. 9.

²² 47 U.S.C. § 303(q).

²³ 47 C.F.R. § 17.47, 17.48, 17.51(b).

²⁴ 47 U.S.C. § 503(b).

²⁵ 47 C.F.R. § 1.80.

²⁶ *Id.*

²⁷ 47 U.S.C. § 504(a).

²⁸ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

13. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer – Financial Operations, Federal Communications Commission, 445 12th Street, SW, Room 1-A625, Washington, D.C. 20554.²⁹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by telephone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

14. **IT IS FURTHER ORDERED** that a copy of this Forfeiture Order shall be sent by first class mail and certified mail, return receipt requested, to GCI Communication Corp., at 2550 Denali Street, Suite 1000, Anchorage, Alaska 99503-2751.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director, Western Region
Enforcement Bureau

²⁹ See 47 C.F.R. § 1.1914.